

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**LINSEY VACKAR ianf DALTON  
VACKAR,**

**Plaintiffs,**

**v.**

**LOWE’S HOME CENTERS, LLC,**

**Defendant.**

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**CIVIL ACTION NO. 5:20-cv-00682**

**NOTICE OF REMOVAL**

Defendant Lowe’s Home Centers, LLC, (“Defendant” or “Lowe’s”), pursuant to 28 U.S.C. §§ 1441 and 1446, gives notice that it hereby removes the case styled *Linsey Vackar ianf Dalton Vackar v. Lowe’s Home Centers, LLC* filed in the 408th Judicial District Court, Bexar County, Texas, to the United States District Court for the Western District of Texas, San Antonio Division. As grounds for removal, Lowe’s respectfully shows the Court as follows:

**STATE COURT ACTION**

1. The state court action was initiated by Plaintiff “Linsay Vackar ianf Dalton Vackar” (“Plaintiff” or “Vackar”) filing the Original Petition (“Original Petition”) on May 1, 2020, in the 408th Judicial District Court, Bexar County, Texas Cause No. 2020-CI-08034 (the “State Court Action”). Plaintiff’s Original Petition asserts negligence and premises liability claims against Lowe’s and seeks to recover damages arising from the injuries Dalton Vackar allegedly sustained as a result of the alleged conduct of Lowe’s.

2. Plaintiff formally served the State Court Action on Defendant on May 18, 2020.

### **REQUIREMENTS FOR REMOVAL**

3. An index of all documents filed in the State Court Action is attached as “Exhibit A.” All documents filed in the State Court Action are attached as “Exhibits A-1 – A-2.”

4. Plaintiff formally served a copy of Plaintiff’s Original Petition on Lowe’s on May 18, 2020.<sup>1</sup> Consequently, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).<sup>2</sup> As set forth in more detail below, this Court has original jurisdiction of this matter based on diversity jurisdiction pursuant to 28 U.S.C § 1332(a).

5. As required by 28 U.S.C. § 1446(b), Lowe’s, the removing party, will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 408th Judicial District Court, Bexar County, Texas, where the State Court Action is currently pending.

### **THE COURT HAS JURISDICTION**

6. The district court of the United States has original jurisdiction over this civil action because there is complete diversity of citizenship between the parties and the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.<sup>3</sup>

7. Plaintiff’s Original Petition states that “Linsey Vackar ianf Dalton Vackar is an individual residing in Bexar County, Texas.”<sup>4</sup> Therefore, on information and belief, Plaintiff is domiciled in the State of Texas and is a citizen of Texas for the purposes of diversity.

8. For purposes of diversity jurisdiction, the citizenship of a limited liability company is determined by looking to the citizenship of all of its members.<sup>5</sup> The sole member of Lowe’s

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<sup>1</sup> See Ex. B.

<sup>2</sup> See *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999).

<sup>3</sup> 28 U.S.C. § 1332(a)(1).

<sup>4</sup> See Ex. A-1, Pet. at 1.

<sup>5</sup> *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008).

Home Centers, LLC is Lowe's Companies, Inc. ("Lowe's Companies").<sup>6</sup> Lowe's Companies is a corporation that is a citizen of North Carolina because it is incorporated in North Carolina and it maintains its principle place of business in North Carolina.<sup>7</sup> There are no other members of Lowe's.<sup>8</sup> Therefore, Lowe's is a citizen of North Carolina because its sole member, Lowe's Companies, is a citizen of North Carolina.<sup>9</sup>

9. "To determine the amount in controversy for diversity jurisdiction purposes, courts look to the plaintiff's complaint."<sup>10</sup> Plaintiff's Original Petition states that she seeks monetary relief of over \$200,000.00 but not more than \$1,000,000.00.<sup>11</sup> Pursuant to 28 U.S.C § 1446(c)(2), the foregoing amount demanded by Plaintiff in her Original Petition is deemed to be the amount in controversy for purposes of this Notice.<sup>12</sup>

### **PRAYER**

WHEREFORE, pursuant to 28 U.S.C. §§ 1332(a)(1), 1441, and 1446, Lowe's prays that the United States District Court for the Western District of Texas, San Antonio Division, accepts

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<sup>6</sup> See Ex. C. Though Plaintiff names "Lowe's Companies, Inc. d/b/a Lowe's Home Centers, LLC, d/b/a Lowe's Home Improvement" in the style of the case, Plaintiff only served Lowe's Home Centers, LLC and only listed Lowe's Home Centers, LLC as a party on page 1 of her Petition. As such, Lowe's Home Centers, LLC is the only properly named and served Defendant in this proceeding.

<sup>7</sup> See Ex. D.

<sup>8</sup> See Ex. C.

<sup>9</sup> See *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) ("[T]he citizenship of a LLC is determined by the citizenship of all of its members.").

<sup>10</sup> *Hodges v. Discovery Property & Casualty Ins. Co.*, No. DR-10-CV-15-AM-VRG, 2011 WL 13234897, at \*2 (W.D. Tex. Feb. 17, 2011) (citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).

<sup>11</sup> See Ex. A-1, Pet. at 6.

<sup>12</sup> *Hodges*, 2011 WL 13234897, at \*2.

this Notice of Removal, assumes jurisdiction of this cause, and issues such further orders and process as may be necessary to bring before it all parties necessary for the trial hereof.

Date: June 5, 2020

Respectfully submitted,

By: /s/ Melanie K. Okon

Melanie K. Okon

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**COUNSEL FOR DEFENDANT  
LOWE'S HOME CENTERS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 5th day of June 2020, a true and correct copy of the above and foregoing has been served upon all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Melanie K. Okon

Melanie K. Okon

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